

Alexander R. Kalyniuk
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U.S. Department of Justice
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Counsel for the United States of America

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(Newark Vicinage)**

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANK GIRALDI,

Serve:
21 Central Avenue
Apartment 2B
Madison, New Jersey 07940

Defendant.

Case No. 2:20-cv-2830

COMPLAINT

Plaintiff, the United States of America (the “**United States**”), at the request and with the authorization of a delegate of the Secretary of the Treasury in accordance with 31 U.S.C. § 3711(g)(4)(C), and at the direction of the Attorney General of the United States, brings this civil action to collect penalties assessed against Frank Giraldi (the “**Defendant**”) pursuant to 31 U.S.C. § 5321(a)(5) in the amount of **\$110,298.62** as of January 6, 2020 plus further interest and penalties as provided by law for his failure to report an interest held in one or more foreign financial accounts during the calendar years 2006, 2007, 2008, and 2009 (the “**Relevant Calendar Years**”). In support of this action, the United States alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

2. Upon information and belief, the Defendant resides in New Jersey. Therefore, venue is proper in the U.S. District Court for the District of New Jersey under 28 U.S.C. § 1391.

PARTIES

3. The Plaintiff is the United States of America.

4. The Defendant is Frank Giraldi who, upon information and belief, is a citizen of the United States who resides at 21 Central Avenue, Apartment 2B, Madison, New Jersey 07940-1953.

LEGAL BACKGROUND

5. Pursuant to 31 U.S.C. §§ 5314, 5321 and 31 C.F.R. §§ 1010.306(c), 1010.350, all citizens or residents of the United States who have a financial interest in, or signatory or other authority over, a foreign financial account or accounts exceeding **\$10,000.00** at any time during a calendar year are required to file an annual report disclosing the existence of each account.

6. For the Relevant Calendar Years at issue in this case, the annual report, known as the Report of Foreign Bank and Financial Accounts (“**FBAR**”), for a calendar year was due no later than June 30 of the year following each applicable calendar year. *See* 31 C.F.R. § 1010.306(c).

7. All persons who are required to file a Schedule B to their federal income tax returns (“**Forms 1040**”) are required to disclose whether, at any time during that tax year, they had a financial interest in or signatory authority over a financial account located in a foreign country.

8. Failure to file a FBAR in any calendar year when it is required is punishable for a penalty not to exceed **\$10,000.00** for every non-willful violation of the FBAR filing requirements. *See* 31 U.S.C. § 5321(a)(5)(B)(i).

THE DEFENDANT'S FOREIGN FINANCIAL ACCOUNTS

9. Upon information and belief, the Defendant is a U.S. citizen and resides in New Jersey.

10. During 2006, 2007, 2008, and 2009, the Defendant maintained the following foreign financial accounts/annuities with foreign financial agencies (collectively, the “**Foreign Financial Accounts**”):

- a. Maerki Baumann & Co.;
- b. Forces Vives (Annuity #2611430);
- c. Forces Vives (Annuity #2612891); and
- d. PAX Insurance (Annuity #L4024574).

11. The Defendant was required to, but has not filed, FBARs for the Relevant Calendar Years.

12. On July 18, 2018 (the “**Assessment Date**”), a delegate of the Secretary of the Treasury made an assessment of civil penalties against the Defendant in the amount of **\$40,000.00** for each calendar year during the Relevant Calendar Years, for a grand total of **\$160,000.00**. On July 24, 2018, a delegate of the Secretary of the Treasury sent a letter to the Defendant demanding payment of the assessed FBAR penalties.

13. Despite the notice and demand for payment, the Defendant has failed to pay the FBAR penalties assessed against him, except for a payment of **\$60,000.00** paid on or about August, 27, 2018.

**COUNT I: NON-WILLFUL FAILURE TO TIMELY FILE FBARS DURING
CALENDAR YEARS 2006, 2007, 2008, AND 2009 PURSUANT TO 31 U.S.C. § 5321(A)(5)**

14. The United States adopts and fully re-incorporates Paragraphs 1 through 13 as if stated herein.

15. During the Relevant Calendar Years, the Defendant was a citizen of the United States.

16. During the Relevant Calendar Years, the Defendant had a financial interest in, signatory authority over, or other authority over at least four (4) Foreign Financial Accounts as described more particularly in Paragraph 10.

17. The Foreign Financial Accounts had an aggregate balance that exceeded **\$10,000.00** during the Relevant Calendar Years.

18. The Foreign Financial Accounts described more particularly in Paragraph 10 are considered financial accounts in a foreign country for the purposes of 31 U.S.C. §§ 5314, 5321(a)(5).

19. The Defendant failed to timely file a FBAR for calendar years 2006, 2007, 2008, and 2009, despite his obligation to do so.

20. On the Assessment Date of July 18, 2018, a delegate of the Secretary of Treasury assessed FBAR penalties against the Defendant in the amount of **\$160,000.00** (the “**Assessed FBAR Penalties**”). The Assessed FBAR Penalties are proper and fall within the civil penalty limits imposed by 31 U.S.C. § 5321(a)(5)(B)(i).

21. Interest and penalties have accrued on the FBAR penalties since the assessment date and, as of January 6, 2020, the total amount owed was **\$110,298.62** (which total includes all payments made by the Defendant).

22. Therefore, the Defendant is liable for **\$110,298.62** as of January 6, 2020, pursuant to 31 U.S.C. § 5321(a)(5) and 31 U.S.C. § 3717, plus further interest, penalties, and statutory additions to those amounts accruing after January 6, 2020 to the date of payment pursuant to 31 U.S.C. § 3717.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiff, the United States of America, respectfully prays for the following relief:

A. That the Court enter judgment in favor of the United States and against Frank Giraldi in the amount of **\$110,298.62** as of January 6, 2020 for the Assessed FBAR Penalties against him under 31 U.S.C. § 5321(a)(5), and further interest, penalties, and statutory additions to those amounts accruing after that date to the date of payment pursuant to 31 U.S.C. § 3717; and

B. That the Court award such other and further relief to the United States, including the costs of this action, as may be deemed just and proper.

DATED: March 16, 2020

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

/s/ Alexander R. Kalyniuk
Alexander R. Kalyniuk
Virginia State Bar Number: 92325
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 227, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-3309
Facsimile: (202) 514-6866
E-Mail: Alexander.R.Kalyniuk@usdoj.gov

Counsel for the United States of America

Of Counsel:
J. Andrew Ruymann
Assistant U.S. Attorney
District of New Jersey

DESIGNATION OF AGENT FOR SERVICE UNDER LOCAL CIVIL RULE 101.1(F)

In accordance with Local Civil Rule 101.1(f), the undersigned hereby designates the United States Attorney for the District of New Jersey to receive service of all notices or papers in this action at the following address:

United States Attorney's Office
District of New Jersey
970 Broad Street, 7th Floor
Newark, New Jersey 07102

Respectfully Submitted:

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

/s/ Alexander R. Kalyniuk
Alexander R. Kalyniuk
Virginia State Bar Number: 92325
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 227, Ben Franklin Station
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Telephone: (202) 616-3309
Facsimile: (202) 514-6866
E-Mail: Alexander.R.Kalyniuk@usdoj.gov

Counsel for the United States of America

Of Counsel:
J. Andrew Ruymann
Assistant U.S. Attorney
District of New Jersey

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Alexander R. Kalyniuk
U.S. Department of Justice, Tax Division
P.O. Box 227, Ben Franklin Station, Washington, D.C. 20044

DEFENDANTS

Frank Giraldi, 21 Central Avenue, Apartment 2B, Madison, New Jersey 07940

County of Residence of First Listed Defendant Morris
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

31 U.S.C. § 5321

Brief description of cause:

FBAR penalties under 31 U.S.C. § 5321

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 110,298.62

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

03/16/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Alexander R. Kalyniuk

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

United States of America

Plaintiff

v.

Frank Giraldi

Defendant

)
)
)
)
)
)
)

Civil Action No. 2:20-cv-2830

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Frank Giraldi
21 Central Avenue
Apartment 2B
Madison, New Jersey 07940

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Alexander R. Kalyniuk
Trial Attorney
U.S. Department of Justice, Tax Division
P.O. Box 227, Ben Franklin Station
Washington, D.C. 20044

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 2:20-cv-2830

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: